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UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

in re:)
)
ROSA NICHOLE RENEE) Case No. 17-41965-BTF7
JAMES,)
)
Debtor.)
)
DANIEL J. CASAMATTA,) 30(b)(6) Deposition of
ACTING UNITED STATES) BK Billing through:
TRUSTEE,)
) David Stidham
Plaintiff,)
)
vs.)
)
CASTLE LAW OFFICE OF)
KANSAS CITY, PC, a)
Missouri Professional) Adv. Case No. 18-4168-CAN
Corporation,)
)
Defendant.)
)
and)
)
JASON C. AMERINE,)
)
Defendant.)

December 13 and 14, 2018
Location: Christensen & Jensen
257 East 200 South, Suite 1100
Salt Lake City, Utah 84101
Reporter: Diana Kent, RPR, CRR and
Dawn Perry, CSR
Notary Public in and for the State of Utah

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(Continued on following page)

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P R O C E E D I N G S

David M. Stidham,
called as a witness, being first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. MILLER:

Q. This is a Rule 30(b)(6) deposition of BK
Billing, LLC which is a Utah entity in connection with
four related adversary proceedings in the United States
Bankruptcy Court for the Western District of Missouri
which have been, for pretrial purposes, consolidated in
regards to the case of In Re Rosa Nichole Renee James.
And the adversary style is Daniel Casamatta versus
Castle Law Office of Kansas City, PC and Jason C.
Amerine under case number 18-4168.

Would you state your name, sir.

A. Yes. David Michael Stidham.

Q. And you have been designated by BK Billing
as the witness to appear here today; is that correct?

A. Yes.

Q. And I know that you have been previously
examined in a deposition before by Ms. Cayton but I'm
going to go over some rules just so we are all clear.

1 would have checked the Bar, as well, in Missouri.

2 Q. Who typically would conduct that review
3 within BK Billing?

4 A. Now we have two or three people that would
5 perform that review. In the case of Amerine and Castle
6 Law, I'm not sure who performed that.

7 Q. Okay. And in July of 2017, did BK Billing
8 have underwriting guidelines with respect to factoring
9 particular bankruptcy cases?

10 A. Could you define "particular"?

11 Q. Well, in June or July of 2017, did you
12 review each bankruptcy case that an attorney proposed
13 to factor with you to determine if it met any sort of
14 internal guidelines?

15 A. Yes.

16 Q. What were those guidelines?

17 A. First, it needed to be a post-petition
18 contract, so we verified that a case had been filed in
19 Pacer; we verified, via Pacer, that a case had been
20 filed. And then the second step would be to verify the
21 amount of the contract, that a contract was signed and
22 executed properly, that there was an attaining payment
23 schedule with the client, between the attorney and the
24 client. And that would be about it, I would imagine.

25 Q. Okay. In July of 2017, did BK Billing

14:43:24 1 review each agreement to determine if a debtor could
14:43:30 2 afford to make the payments that were proposed?

14:43:41 3 A. What do you mean by "afford"?

14:43:43 4 Q. Let me ask it this way: Did BK Billing
14:43:46 5 have any guidelines for accepting factoring with regard
14:43:49 6 to the amount of money a debtor made?

14:43:51 7 A. Yes.

14:43:52 8 Q. Okay. What were those guidelines in July
14:43:56 9 of 2017?

14:43:59 10 A. Those guidelines have changed as
14:44:03 11 information has come in. In July of 2017, I would
14:44:13 12 imagine it would be a percentage -- that the payment to
14:44:21 13 the attorney could not exceed a certain percentage of
14:44:30 14 the gross total income of the client. So we would
14:44:36 15 verify client gross income, and then there was a
14:44:46 16 calculation that said that a certain percentage of the
14:44:51 17 gross client income could go to an attorney monthly
14:44:57 18 payment, and that if the payment schedule fit within
14:44:59 19 that parameter we would agree to accept it for
14:45:03 20 factoring.

14:45:07 21 Q. Do you know what that percentage was?

14:45:08 22 A. No.

14:45:09 23 Q. Does BK Billing have records that would
14:45:12 24 indicate what that percentage was in July of 2017?

14:45:15 25 A. Yes.

14:50:53 1 agreement for a minute.

14:50:54 2 A. Okay.

14:50:59 3 Q. At the very bottom, paragraph 1 of the --
14:51:03 4 numeral paragraph 1 of the agreement governs the
14:51:06 5 purchase price for the purchase of the agreement, or
14:51:12 6 the contract; is that correct?

14:51:13 7 A. Yes.

14:51:13 8 Q. And it indicates that Castle Law would
14:51:17 9 sell accounts to BK Billing in exchange for 70 percent
14:51:20 10 of the face value of that agreement; is that correct?

14:51:23 11 A. Yes.

14:51:24 12 Q. It also says that Castle Law would be paid
14:51:29 13 within two to three days after providing BK Billing
14:51:32 14 with all the documents regarding an individual account;
14:51:35 15 is that correct?

14:51:36 16 A. Yes.

14:51:40 17 Well, hold on. I said yes too soon.

14:51:42 18 Q. Okay.

14:51:43 19 A. It says, "BK Billing will pay the Purchase
14:51:47 20 Price to the Firm within two to three business days
14:51:50 21 after BK Billing's approval of the Firm's Transferred
14:51:53 22 Accounts uploaded to the BK Billing online portal." So
14:51:56 23 documents could be uploaded into the portal, but unless
14:52:00 24 they got through underwriting there would not be a
14:52:02 25 transfer of funds until that occurred.

14:52:04 1 Q. So BK Billing does do underwriting with
14:52:07 2 respect to every contract?
14:52:08 3 A. Yes.
14:52:08 4 Q. Okay. And that was the criteria that we
14:52:11 5 were talking about earlier; is that correct?
14:52:13 6 A. Yes.
14:52:13 7 Q. Who does the actual underwriting review at
14:52:18 8 BK Billing?
14:52:19 9 A. For each individual contract?
14:52:20 10 Q. Yes. Do you have staff that do that?
14:52:22 11 A. Yes.
14:52:23 12 Q. Are those lawyers?
14:52:24 13 A. No.
14:52:24 14 Q. Okay. Do you reject contracts routinely?
14:52:31 15 A. No. Not routinely, no.
14:52:37 16 Q. Okay. Does BK Billing ever reject any
14:52:40 17 contracts that are submitted for factoring?
14:52:42 18 A. Yes.
14:52:43 19 Q. Has BK Billing rejected any contract
14:52:46 20 submitted by Castle Law Office?
14:52:53 21 A. I'm not sure. I would imagine the answer
14:52:56 22 is yes.
14:52:57 23 Q. Does BK Billing keep any records with
14:53:00 24 respect to contracts that's rejected for factoring?
14:53:03 25 A. Yes.

16:11:12 1 A. Adelaide Maudsley at Kirton McConkie in
16:11:17 2 Salt Lake City.

16:11:17 3 Q. Do you know if she reviewed them for
16:11:24 4 compliance with any law other than Utah?

16:11:32 5 A. Yes.

16:11:37 6 Q. Did she review it for compliance with any
16:11:40 7 laws other than Utah?

16:11:43 8 A. Yes. Bankruptcy code is federal, and so
16:11:48 9 we assume -- we did not assume. We researched and
16:11:55 10 created a contract that, to us, obviously complied with
16:12:03 11 federal bankruptcy code.

16:12:05 12 Q. Could you say her name one more time?
16:12:20 13 Adelaide -- what was the last name?

16:12:22 14 A. Maudsley, M-A-U-D-S-L-E-Y.

16:12:26 15 Q. Did she ever provide BK Billing an opinion
16:12:29 16 letter about the viability of either of these
16:12:33 17 documents?

16:12:41 18 A. No.

16:12:41 19 Q. Would you look at the document that is
16:12:49 20 Bates stamped 1960.

16:12:53 21 A. Yes.

16:12:55 22 Q. I believe we previously reviewed a
16:12:59 23 provision of the agreements that required the law firm,
16:13:03 24 in this case Castle Law, to obtain a signed payment
16:13:08 25 authorization form; is that correct?

16:13:09 1 A. Yes.

16:13:09 2 Q. Would this be an example of one such

16:13:12 3 payment authorization form?

16:13:14 4 A. Yes.

16:13:14 5 Q. Do you know who prepared this document?

16:13:24 6 A. Yes.

16:13:27 7 Q. Who, to the best of your knowledge?

16:13:30 8 A. It was a collaboration.

16:13:32 9 Q. This document was actually required to be

16:13:35 10 used by partner attorneys; is that correct?

16:13:37 11 A. No.

16:13:38 12 Q. Well, the contract provided that whatever

16:13:45 13 recurring payment authorization form was used had to be

16:13:48 14 in a format acceptable to BK Billing; is that correct?

16:13:51 15 A. Yes.

16:13:51 16 Q. Are you aware of any attorneys who used a

16:13:54 17 form other than this form?

16:13:55 18 A. Yes.

16:13:56 19 Q. Was there a reason why a form other than

16:14:01 20 this form was used by other attorneys?

16:14:05 21 MR. MILLAR: Objection. Calls for

16:14:06 22 speculation.

16:14:06 23 If you know the answer.

16:14:07 24 A. Yes.

16:14:11 25 Q. What was that reason, if you know?

09:29:47 1 contract length/holdback account processing fee header.

09:29:51 2 Do you see that?

09:29:52 3 A. Yes.

09:29:52 4 Q. It says -- the first sentence there says,
09:29:55 5 "Contracts can now be between 6 and 18 months."

09:29:59 6 Is that correct?

09:29:59 7 A. Yes.

09:30:00 8 Q. What was that changed from?

09:30:04 9 A. Twelve months.

09:30:05 10 Q. So BK Billing now will factor contracts
09:30:09 11 over 18 months instead of 12 months?

09:30:14 12 A. No. According to this document, yes,
09:30:18 13 which was titled May 15th, 2018. That is no longer the
09:30:23 14 case, no.

09:30:24 15 Q. Have there been further underwriting
09:30:27 16 revisions?

09:30:28 17 A. Yes.

09:30:28 18 Q. When did those go into effect?

09:30:32 19 A. They will go into effect for 2019. There
09:30:39 20 also have been some from October of 2018. We change --
09:30:42 21 I believe October 2018. We change underwriting
09:30:46 22 procedures with frequency based on the data that we are
23 receiving.

09:30:52 24 Q. Okay. Why did BK Billing decide to go
09:30:56 25 back to 12-month contracts?

09:31:00 1 A. Risk of default and delinquency.

09:31:02 2 Q. So there was a determination made that on

09:31:04 3 a contract of longer than 12 months there was an

09:31:07 4 increased risk of delinquency?

09:31:10 5 A. Without getting into our proprietary

09:31:13 6 analysis of the data, yes, there was an increased

09:31:17 7 default risk with contract terms over 12 months.

09:31:20 8 Q. When did the change go into effect to

09:31:22 9 change it back to a 12-months maximum?

09:31:26 10 A. It will be 2019.

09:31:27 11 Q. So as of today, you would accept a

09:31:30 12 contract of 18 months?

09:31:36 13 A. Yes. Yes.

09:31:40 14 MR. MILLAR: Can you read that back

09:31:43 15 just -- for some reason I was distracted by this, so

09:31:46 16 can you read that back, please?

09:32:06 17 (Record was read as follows: "When did

09:31:20 18 the change go into effect to change it back to a

09:31:24 19 12-months maximum?"

09:31:26 20 "Answer. It will be 2019.

09:31:27 21 "Question. So as of today, you would

09:31:29 22 accept a contract of 18 months?

09:31:36 23 "Answer. Yes.")

09:32:21 24 Q. (By Mr. Miller) There is a statement in

09:32:23 25 this -- there is a chart. Do you see the chart on this

1 way we know how to get a post-petition bankruptcy
2 receivable is through the process of bifurcation.

3 Q. (By Mr. Koehler) And it's not by
4 accident -- oops, I forgot to do half my services
5 before the bankruptcy is filed; I guess I'll go ahead
6 and bifurcate this agreement -- it's a planned process.
7 Would that be a fair statement?

8 A. Yes.

9 Q. All right. You've answered questions over
10 the last several hours between yesterday and today
11 about the underwriting process and evaluating, for
12 example, some information with regards to the law
13 firm's client. So there might be bank statements or
14 paycheck records or something like that.

15 Do you recall those questions and your
16 answers about those documents?

17 A. Yes.

18 Q. All right. On the topic of the law firm's
19 clients and, for example, the sophistication of a
20 client, would you expect that a client that is needing
21 bankruptcy services -- potential bankruptcy services,
22 and knowing enough to search out a law firm, has at
23 least some level of sophistication to be able to make
24 these types of decisions about their personal finances?

25 A. Yes.

10:18:01 1 Q. All right. If you were wanting to try to
10:18:08 2 get a viewpoint, an opinion, if you will, because --
10:18:12 3 strike that. Let me back up.

10:18:13 4 Would it be fair for me to say that in
10:18:16 5 your business model BK Billing does not, for example,
10:18:21 6 call up a law firm's client and have a ten-minute
10:18:25 7 interview where they are asking questions and having
10:18:27 8 the client answer questions as far as trying to gauge
10:18:32 9 that client's specific sophistication? Would that be
10:18:36 10 fair?

10:18:37 11 A. Yeah, that does not happen.

10:18:42 12 Q. Would you -- as the CEO of BK Billing,
10:18:47 13 would you want to obtain the viewpoint or opinion about
10:18:51 14 sophistication of a client from a law firm that
10:18:53 15 regularly deals with consumers, or would you want to
10:18:57 16 try to get or rely upon the opinion, for example, of a
10:19:01 17 government lawyer who has been a 30-year bureaucrat? I
10:19:05 18 mean, whose opinion would you trust more?

10:19:08 19 A. We, as a rule, default to the service
10:19:15 20 provider and the service provider's opinion.

10:19:18 21 Q. Do you value that they have daily
10:19:20 22 interaction with these types of consumer clients versus
10:19:24 23 a government lawyer?

10:19:25 24 A. We would expect it.

10:19:29 25 Q. Would you also expect that -- based upon

10:19:34 1 my prior questions a few minutes ago of wanting to deal
10:19:37 2 with ethical lawyers, that you would be wanting to have
10:19:40 3 relationships with lawyers and law firms that are
10:19:42 4 interested in looking after the best interests of their
10:19:45 5 clients?

10:19:46 6 A. That is one of the key criteria.

10:19:49 7 Q. And that would include topics such as
10:19:54 8 conflicts of interest or anything. Would that be fair?

10:19:57 9 A. Yes.

10:19:57 10 Q. All right. And based upon your
10:20:00 11 experience, would you trust the clients that you are
10:20:03 12 working with to be able to provide that type of
10:20:05 13 analysis, or would you expect that a government lawyer,
10:20:08 14 who has been with the government for 30 years, for
10:20:11 15 example, would be in the best position to make that
10:20:14 16 analysis?

10:20:14 17 MR. MILLER: Objection. Calls for
10:20:15 18 speculation.

10:20:16 19 You can answer.

10:20:19 20 THE WITNESS: It is my experience that
10:20:22 21 there are varying degrees of sophistication amongst
10:20:30 22 service providers that we deal with or that we work
10:20:34 23 with.

10:20:36 24 However, generally speaking, the consumer
10:20:44 25 attorneys that we work with have their boots on the

10:20:47 1 ground, so to speak, and understand the actual needs of
10:20:55 2 the people that are coming to them for service, and
10:20:59 3 their viewpoint as to how to best meet their clients'
10:21:04 4 needs and their consumers' needs would hold weight, in
10:21:10 5 my mind, as opposed to a bureaucratic opinion, yes.

10:21:15 6 Q. (By Mr. Koehler) Okay. I asked you,
10:21:16 7 before you came in here today, to read -- there is a
10:21:19 8 plaque in the lobby of this U.S. Trustee's office. Did
10:21:22 9 you read that?

10:21:23 10 A. Yes.

10:21:24 11 Q. And would you agree with me that it
10:21:25 12 generally said that the U.S. Trustee's office -- that
10:21:29 13 their goals are to preserve the integrity and
10:21:33 14 efficiency of the bankruptcy process, the bankruptcy
10:21:36 15 system?

10:21:36 16 MR. MILLER: Objection. It exceeds the
10:21:38 17 scope of my direct examination of the debtor, and it's
10:21:42 18 irrelevant, but he can answer.

10:21:43 19 THE WITNESS: Yes.

10:21:45 20 Q. (By Mr. Koehler) Okay. And would you
10:21:47 21 agree with me that if you were trying to achieve
10:21:50 22 efficiency, that it would be more efficient to have a
10:21:53 23 conversation with someone than to file, in your words,
10:21:57 24 a spurious lawsuit?

10:21:57 25 MR. MILLER: Objection. Same objection I